

October 31, 2000

Jeffrey M. Senger
Deputy Senior Counsel for Dispute Resolution
United States Department of Justice
950 Pennsylvania Avenue NW, Room 4328
Washington, D.C. 20530

Dear Mr. Senger:

I offer the following comments on the notice published in the Federal Register, October 4, 2000.

At what point do confidentiality provisions take effect?

II (6) defines dispute resolution proceeding; IV 4 further states that "a dispute resolution proceeding is *any process involving the services of a neutral...*" IV 5 says, "The ADR Act supports a broad reading of the term 'neutral'. *An intake or convening neutral is included in this definition....*" [italics added]

Could this be interpreted to include roster managers? Since "Sharing" arrangements typically involve multiple agencies, the roster manager frequently is dealing with cases outside his or her own agency. Information is communicated about these cases (frequently electronically). There are implications for confidentiality including record keeping, and program evaluation. It may also imply that roster managers could be held accountable for breaches of confidentiality by roster mediators.

Is the Model Confidentiality Statement Effective, Helpful?

Admittedly it is difficult to provide the type of information that is needed to parties. I find this particular statement too complex and potentially chilling. It might be useful to think in terms of the confidentiality provisions in relationship to the 1) parties, 2) mediator(s), and 3) others, and develop guidance that way.

What is the Purpose of the Evaluation Information?

This entire segment tries to do too many things; as a result I don't think very many program people will use it. It also takes an overly-simplified view of ADR "programs." The designation of an agency ADR Specialist with overall policy and coordinative responsibilities, does not mean there is an ADR "program." The application of ADR techniques is frequently tied to functions (i.e., EEO, Labor and Employee Relations, Contracts and Procurement, Administrative Appeals). The evaluation responsibility should rest within that particular functional area.

recommend changing the heading for B. How Will You Pay for Your Evaluation? First, it

raises red flags about yet another cost. Second, it is inconsistent with the intent of the Government Performance and Results Act (GPRA) which is cited several times. GPRA is a self-evaluative tool designed to measure results. Management must be actively engaged in the planning and evaluative processes. Management determines its priorities, establishes measures and sets targets. The point is, hiring an outside consultant or academician to conduct a GPRA evaluation is inappropriate and ineffective.

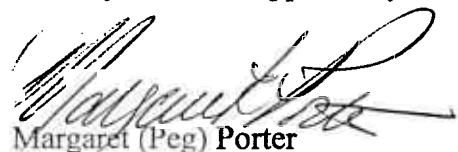
From my perspective, few ADR efforts would need to contract for outside assistance with evaluation. The Council and Steering Committee might want to consider developing a simple evaluation workbook. I suggest involving some agency evaluators in its development.

II. Recommendations section, 2. Data to be Captured, contains two highly problematic items time savings and cost avoidance. Both pose substantial problems in devising meaningful measures. Cost-benefit analyses, if used at all, should be developed very carefully with the assumptions clearly stated. I suggest consultation with OMB and GAO.

The larger questions are what is a successful outcome? can data effectively measure outcomes of ADR?

A final general comment on evaluation. As I see it, there are two primary components to evaluation. 1) are the products, services, etc. being delivered efficiently and effectively? and 2) is the program/project responding to changes in demand and expectations? The first relies heavily on feedback from customers and users. The second typically looks at changes over time. Each component informs the other and both are continuous.

Thank you for the opportunity to comment



Margaret (Peg) Porter

Administrator

Sharing Neutrals